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terest of a defendant requires the presence of a new party, he should make the objection of non-joinder and the complainant will be required to amend his bill or else it will be dismissed. If the court ascertains that an indispensable party is not before it on the record it refuses to proceed.

FULLER v. CONRAD'S ADM'R.—Decided at Richmond, January 21, 1897.—*Harrison, J.*:

1. DOWER—*How assigned—Rents and profits—Action of lower court not conclusive.* The object of dower is to afford the widow a sure and competent support, and it should be so assigned that she may enjoy one-third of the income arising from the estate, the probable rents and profits, and not the mere fee-simple value, being the chief subject of consideration. While the report of commissioners to assign dower and the action of the court in confirming their report are entitled to much consideration, they are not conclusive, and, if they plainly depart from the above rule, the decree confirming the report will be reversed and the report set aside.

FISHER v. WHITE AND OTHERS.—Decided at Richmond, January 21, 1897.—*Buchanan, J.*:

1. MORTGAGE—*Foreclosure—Personal decree against vendee of mortgagor who has assumed payment—Frame of bill.* Where a mortgagor has sold the mortgaged land, and his vendee has assumed to pay the mortgage debt, a decree, in a suit to foreclose the mortgage, may be rendered directly against such vendee, who has also assumed the payment of the mortgage debt, in favor of the mortgagee for any balance that may remain due after the mortgaged subject has been sold, and the proceeds applied to the payment of the mortgage debt; but, in order to warrant such a decree it would seem that the complainant should pray for it in his bill. Certainly that would be the better practice.

2. CHANCERY PLEADING—*Answer of one defendant not evidence against another.* The answer of one defendant cannot be read as evidence by a complainant against another defendant, when there is no joint interest, privity, fraud, collusion, or combination between the co-defendants.

3. AGENCY—*How established—Admissions of alleged Agent.* An alleged agency which is denied cannot be established by proof of the admissions or statements of the alleged agent, but the fact must be proved by other evidence. If it is desired to establish it by the alleged agent himself, he must be called as a witness.

CITY OF PETERSBURG v. COCKE.—Decided at Richmond, January 28, 1897.—*Cardwell, J.*:

1. MUNICIPAL CORPORATIONS—*Power to tax non-residents—License tax on non-resident attorneys at law.* The legislature has power to authorize municipal corporations to impose taxes on persons whose ordinary avocations are pursued within the corporate limits, although residing beyond those limits, the same as upon residents, and, in the case at bar, the city of Petersburg has power, under its charter, to impose a license tax on an attorney at law having his office and place of business in the city and practicing his profession therein, although he resides outside

of the city's limits, in like manner as upon an attorney residing and doing business within the city.

2. CITY ORDINANCE—*License tax on "every attorney at law."* A city ordinance imposing a specific license tax "on every attorney at law" includes non-resident attorneys who have offices and practice their profession in the city as well as resident attorneys.

ROBERTSON v. SMITH.—Decided at Richmond, January 28, 1897.—

Buchanan, J:

1. JUDICIAL SALES—*Confirmation—Affidavits—Depositions—Reference to a commissioner.* Upon a question of the confirmation of a judicial sale it is usual to allow either party to read *ex parte* affidavits. But the trial court may, in its discretion, require depositions to be taken in whole or in part, or refer the matter to one of its commissioners. In the case at bar no objection was made to the reading of the affidavits, and the record does not disclose any error in permitting them to be read, even if that question could be raised for the first time in the appellate court.

2. JUDICIAL SALES—*Terms differing from decree—Effect of confirmation.* Though a judicial sale be made on terms differing from those prescribed by the decree of sale, yet the confirmation of the report of sale cures the irregularity and gives the sale the same validity and effect as if made upon the precise terms of the decree.

3. STATUTE OF FRAUDS—*Judicial sales not within the statute.* A party who relies on the statute of frauds must generally do so in his pleadings. A judicial sale, however, made under a decree of a court of chancery is not within the statute of frauds. It is binding on the bidder or purchaser without any written contract or memorandum signed by him or his agent.

4. JUDICIAL SALES.—*Rule against purchaser to compel compliance with.* A purchaser at a judicial sale who fails to complete his purchase or to comply with the terms of sale may be proceeded against by rule and compelled to do so.

CITY OF NORFOLK v. JOHNAKIN.—Decided at Richmond, February 4, 1897.—Cardwell, J:

1. INSTRUCTIONS.—*Failure to except to.* The Court of Appeals will not consider objections to instructions given by the trial court, when it appears that no exception was taken to the action of the trial court in giving the instructions complained of.

2. MEASURE OF DAMAGES—*Personal injuries—Excessive verdict.* There is no legal measure of damages for the pain and anguish resulting from a personal injury, and, ordinarily, the court will leave the question of amount to the sound discretion of the jury, and will not set aside a verdict as excessive unless the damages are so great as to indicate that the jury was actuated by partiality or prejudice, or acted under some gross error or misconception of the subject.

3. NEGLIGENCE—*Obstructing streets.* It is negligence in a city to allow its streets to remain obstructed at night, without taking reasonable and proper precautions to light them so as to enable persons travelling thereon to observe the obstructions by the use of ordinary care.